APPENDIX

TO THE

BOOK OF THE RULES

OF THE

MEDICAL ASSOCIATION

OF THE

STATE OF ALABAMA,

Including all the Additions and Changes in the Constitution and Ordinances of the Association up to the year 1893.

MONTGOMERY, ALA.:
THE BROWN PRINTING CO., STATE PRINTERS AND BINDERS.
1893

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BOOK OF THE RULES.

The New Charter.

Section 1. *Be it enacted by the General Assembly of Alabama*, That James Thomas Searcy, President; Jacob Huggins, Senior Vice-President; Barclay Wallace Toole, Junior Vice-President; Thomas Alexander Means, Secretary; Walter Clark Jackson, Treasurer; and Jerome Cochran, George Augustus Ketchum, Edward Henry Sholl, Wilds Scott DuBose, John Brown Gaston, Samuel Dibble Seelye, William Henry Sanders, Charles Whelan, Peter Bryce, and Benjamin James Baldwin, Board of Censors; and their associates and successors of the Medical Association of the State of Alabama, be, and are hereby constituted a body corporate, under the name and style of the Medical Association of the State of Alabama, and by that name and style may sue and be sued, plead and be impleaded, and have a common seal, with power to change or alter the same at pleasure; and the corporation hereby constituted shall be recognized as the continuation of the corporation instituted under the same name and style by an act of the General Assembly which was approved on the 13th day of February, 1850, and which was composed of A. Lopez, J. Marion Sims, N. L. Meredith, Thos. W. Mason, J. A. English, T. A. Bates, W. B. Johnson and N. M. Jackson, and their associates and successors.

SEC. 2. *Be it further enacted*, That this said corporation, the Medical Association of the State of Alabama, together with the county Medical Societies in affiliation therewith, shall be governed in accordance with the provisions of the constitution adopted by it at its annual session in Tuscaloosa in 1873, and also in accordance with the provisions of the several acts of the General Assembly which have been or may be enacted for the government of the said corporation; and the said corporation may, from time to time, enact or ordain such by-laws, regulations and ordinances for its government as to it may seem expedient, not in conflict with the laws of this State nor with the provisions of the said constitution of 1873.

SEC. 3. *Be it further enacted*, That the officers of the said Medical Association shall be, as provided for in the said constitution of 1873, as follows: One president, two vice-presidents, one secretary, one treasurer, and ten censors, to be elected according to the provisions of the said constitution, and with the powers and duties therein enumerated; and the Board of the ten Censors shall, in the intervals between the sessions of the said association, constitute the business and executive committee thereof, and shall have the full legal power and authority to act for the said association in the discharge of all its legal powers, duties and obligations.

SEC. 4. *Be it further enacted*, That in the said Medical Association of the State of Alabama, there shall be four classes of members, namely: (1) The members of the affiliated county societies; (2) Delegates, of which each affiliated society is entitled to two; (3) Counsellors, not to exceed one hundred (100) on the active roll, plus such number of life counsellors as may be transferred to the life roll after twenty years service on the active roll; and (4) Correspondents, all according to the provision of the constitution of 1873, with the privileges and duties as therein set forth;

Counsellors and Delegates only to be entitled to vote; and Counsellors alone to be entitled to hold office; and the Counsellors and Delegates, not less than twenty-five, present at any session of the Association, regular or called, to constitute a quorum competent for the transaction of any business that can legitimately come before any session.

SEC. 5. *Be it further enacted*, That the said association is hereby authorized and empowered to have and to hold by purchase, gift, grant, or otherwise, property, real, personal, and mixed, not to exceed in value two hundred thousand dollars, and to sell, hypothecate and dispose of the same at pleasure.

AN ACT TO PROVIDE FOR THE PAYMENT OF A CLERK FOR THE STATE BOARD OF HEALTH.

Be it enacted by the General Assembly of Alabama, That the sum of four hundred dollars a year, be, and the same is hereby appropriated for the salary of a clerk for the State Board of Health, to be paid by the auditor in monthly installments on the order of the presiding officer of said State Board of Health; and that this act shall take effect from and after its passage.

Approved February 18th, 1893.

AN ACT TO AMEND SECTION 4078 OF THE CODE.

Be it enacted by the General Assembly of Alabama, That section 4078 of the code be, and the same is hereby amended so as to read as follows: 4078 (4244). *Practicing medicine or surgery without certificate of qualification, fine.*—Any person practicing medicine or surgery in this State without having first obtained a certificate of qualification

from one of the authorized boards of medical examiners of this State, shall be guilty of a misdemeanor, and, on conviction thereof, shall be fined not less than twenty-five dollars, nor more than one hundred dollars.

Provided, That this act shall not apply to any doctors or physicians now practicing medicine in Alabama who are graduates of a reputable medical college, and have complied with the law by having their diplomas recorded by the judge of probate in the county in which they may be practicing medicine; and this act shall not apply to any physician who has practiced medicine in this State for the past five years.

This new statute is believed to be clear and explicit in the provision of a sufficient penalty to secure the enforcement of the law. We stand now in a better position than ever before, because the constitutionality of the law has been sustained in two decisions of the supreme court of the State. In the first of those cases, that of Harrison v. the State, it was held that even if a physician had a certificate of qualification, still he could not collect fees by law unless said certificate had been registered in the probate office of the county. In the case of Brooks against the State, after reviewing the objections that had been argued against the constitutionality of the law, the court sums up the argument by the declaration, "We find nothing in the civil aspect of the statute which offends the State constitution."

There are in effect two provisions in this proviso. The first is intended to protect from the criminal penalty—not less than twenty-five dollars, nor more than one hundred dollars—doctors who, like Dr. Brooks, have heretofore engaged in practice by having their diplomas recorded, but without having first obtained a certificate of qualification from an authorized board of medical examiners, as the law requires. It will be observed that this proviso applies only to physicians who had complied with the terms at the time of the passage of this statute, which was on the 18th of February of the present year, 1891. It will be observed, also, that this proviso applies only so far as to protect from prosecution the class of doctors mentioned whose diplomas have been recorded prior to the foregoing date in the counties in which at that time they were engaged in practice. If the diploma was recorded in some other county the exemption does not hold. This explanation seems to be in consonance with the intention of the general assembly in passing this proviso. But it is not at all certain that the proviso has the legal force it was intended to have. The words, "having complied with the law by having their diplomas recorded," stands in need of

construction. Having complied with what law? If they have complied with no law in recording their diplomas the proviso is certainly nugatory and of no effect, and they are not exempt from any penalty. But it will be best for our boards to respect the intention of the general assembly, and not to institute suits in this class of cases.

In the meantime it must be remembered that because the class of cases here under consideration may be exempt from the criminal penalty of the law, it does not, therefore, follow that they are legal practitioners of medicine. On the contrary, it is certain that they are not legal practitioners of medicine, and that they remain subject to all the civil penalties and disabilities incident to violation of the law. They cannot collect fees by law. They cannot become members of the county societies. And, by a ruling of the State medical association, they are not entitled to the privileges of consultation.

The second proviso, exempting from the penalty of the law physicians who have practiced medicine in Alabama for the last five years, is just so much surplusage. We doubt if it can apply to any body in the State, all practitioners of five years standing having already qualified under the law.

Amendments to the Constitution.

(1) To Article 47. The word "secretary"—the last word of the Article—is struck out, and the words "Senion Censor" inserted. Adopted at Selma, 1893.

(2) To Article 48. The whole article is struck out, and the article following inserted in its stead:

Art. 48. All funds and securities of the association shall be placed in such banks or depositories as may be from time to time designated by the Board of Censors, and shall be drawn out only on orders signed by the treasurer and countersigned by the president of the association and the senior censor. Adopted at Selma, 1893.

(3) To Article 51. This article is amended to read as follows:

Art. 51. The Board of Censors shall hold such meetings concurrently with the annual sessions of the association, and also from time to time such special sessions, to be called by the Senior Censor, as the business they may have on hand may seem to require; and the number of censors

present at any meeting shall constitute a quorum. During the intervals between the sessions of the association the Board of Censors shall be the authorized agents of the same in all matters pertaining to its general welfare; and may from time to time present for the consideration of the association such suggestions and recommendations as to them may seem advisable. Adopted at Huntsville, 1891. See also new charter, section 3.

(4) To ARTICLE 80. At the end of sub-section 1 the following words are added:

The Counsellors and Delegates present at any session of the association shall constitute a quorum for the transaction of business. Adopted at Huntsville, 1891. The new charter makes the quorum not less than twenty-five.

(5) To ARTICLE 80. The Annual Oration, the Monitor's Address, and the Report of the Historian come in properly between the orders of business numbered 4 and 5. They will probably come best in the evening session of the first day.

CHANGES AND ADDITIONS TO THE ORDINANCES.

(1) To the ordinance in relation to the committee of publication and its duties. In section (6) after "The Annual Message of the President;" insert "The Annual Reports of the two vice-presidents in order of seniority."

(2) To the same ordinance, section (8). After the "Annual Oration," insert "the Monitor's Address; the Report of the Historian."

(3) Section (5) of the Ethical Ordinances of the association as it appears on page 222 of the Book of Rules is repealed and abrogated.

(4) On page 40 of the Book of Rules fourth line from the top "three hundred dollars," should be "two hundred and fifty dollars, ($250,00)."

The Revision of the Rolls.

Sections I and II of the following ordinance take the place of the sections correspondingly numbered on pages 20 and 22 of the Book of Rules. The remaining sections of the ordinance in relation to the revision of the rolls, beginning on page 20 of the Book of the Rules, remain unchanged.

AN ORDINANCE TO AMEND THE ORDINANCE IN RELATION TO THE REVISION OF THE ROLLS.

Be it ordained by the Medical Association of the State of Alabama, That the Senior Censor, the Secretary and the Treasurer of the Association be and are hereby constituted a Committee on the Revision of the Rolls.

SECTION I.—*The order of the Revision of the Roll of the County Medical Societies.*

(1) That this said committee, at every annual session of the Association and after due consultation and before the time comes for the Association to proceed to the revision of the rolls, shall prepare three lists or schedules of the county medical societies for the use of the Association in making the revision of the roll of the county medical societies: The first list to contain, in alphabetical order, the names of all such county societies as have complied with the rules of the association in regard to representation, reports and dues; the second list to contain the names in alphabetical order of all such county societies as have complied with some of the rules of the association in regard to representation, reports and dues, but which have not complied with all of them, mentioning in connection with each society the delinquency, or the delinquencies charged against it; the third list to contain the names, in alphabetical order, of all such county societies as have failed entirely to comply with the rules of the association in regard to representation, reports and dues;

these three lists or schedules being entitled respectively, societies not delinquent, societies partially delinquent, and delinquent societies.

(2) That when the time comes, in the progress of the revision of the rolls, for the secretary to call the names of the county societies, he shall first call, consecutively, all the names on the first schedule above provided for; whereupon the President shall say: *You have heard the list of county societies which the secretary has just read, and which are reported as having complied with all the rules. If there is no objection these societies will be duly passed.* And the order will be made accordingly.

(3) Then the secretary shall, in like manner, call, consecutively, all the names in the second schedule above provided for, mentioning the delinquency in each case; whereupon the President shall say: *You have heard the list of county societies just read by the secretary, with the delinquencies respectively charged against them. If there is no objection these societies, notwithstanding their partial delinquencies, will be passed.* And the order will be made accordingly.

(4) Then the secretary shall, in like manner call, consecutively, all the names on the third schedule above provided for; whereupon the President shall say: *You have heard the list of county societies just read by the secretary as being delinquent in representation, reports and dues. If there is no objection these societies will be referred to the Board of Censors for investigation.* And the order shall be made accordingly.

(5) Then the President shall say: *Have all the county societies been called. Is there anything further to be done in regard to the roll of county societies?* If nothing further is suggested the President shall say: *The revision of the first roll is here ended. The roll of the county medical societies stands closed until the next annual session of this association.*

SECTION II.—*The order of the Revision of the Roll of the College of Counsellors.*

(1) That in like manner and after due consultation the committee on the revision of the rolls shall prepare seven lists or schedules of the counsellors of the association. The first list to contain in alphabetical order under the heads of grand senior life counsellors, grand senior counsellors, senior counsellors, and junior counsellors, the names of all such counsellors as have complied with the rules of the association in regard to attendance and dues, and against whom there are no charges pending. The second list to contain in like order the names of all such counsellors as may be delinquent in attendance or in dues, or against whom charges may be pending. The third list to contain the lists of all such counsellors as may have died since the last revision, or have offered their resignation, or have moved out of the State. The fourth list to contain the names of all grand senior counsellors of ten years standing. The fifth list to contain the names of all senior counsellors of five years standing. The sixth list to contain the names of all junior counsellors of five years standing. The seventh list to contain the names of all counsellors elect who have signed the pledge and paid the dues.

(2) these seven lists or schedules shall be designated respectively as follows: (1) The schedule of counsellors clear of the books; (2) the schedule of delinquent counsellors; (3) the schedule of miscellaneous counsellors; (4) the schedule of grand senior counsellors of ten years standing; (5) the schedule of senior counsellors of five years standing; (6) the schedule of junior counsellors of five years standing; (7) the schedule of counsellors elect who have signed the pledge and paid the dues.

(3) That when the time comes in the progress of the revision of the rolls for the secretary to call the roll of the

college of counsellors he shall first call consecutively all the names on the first of the lists provided for above; whereupon the President shall say: *You have heard the names of the counsellors just read by the secretary and reported to be clear of the books. If there is no objection they will be passed.* And the order shall be made accordingly.

(4) Then the secretary shall in like manner call all the names on the second list provided for above; whereupon the President shall say: *You have heard the names of the counsellors just read by the secretary and reported to be delinquent in their obligations to the association. Under the rules, and if there is no objection, these names will be struck from the roll of the college of counsellors, and of this they will be duly notified by the secretary.* And the order shall be made accordingly.

(5) Then the secretary shall in like manner call all the names on the third of the lists provided for above; whereupon the President shall take such action in each case as may be appropriate under the circumstances.

(6) Then the secretary shall call all the names on the fourth of the lists provided for above; whereupon the President shall say: *You have heard the list of names as read by the secretary of the grand senior counsellors who have served as such for ten consecutive years. Under the rules of the association these counsellors are entitled to be transferred to the roll of grand senior life counsellors. If there is no objection they will be so transferred.* And the order shall be made accordingly.

(7) Then the secretary shall call all the names on the fifth of the lists provided for above; whereupon the President shall say: *You have heard the names as read by the secretary of the senior counsellors who have served as such for five consecutive years. Under the rules of the association these counsellors are entitled to be transferred to the roll of grand senior counsellors. If there is no objection they will be so transferred.* And the order shall be made accordingly.

(8) Then the secretary shall call all the names on the sixth of the lists provided for above; whereupon the President shall say: *You have heard the list of names as read by the secretary of the junior counsellors who have served as such for five consecutive years. Under the rules of the association these counsellors are entitled to be transferred to the roll of senior counsellors. If there is no objection they will be so transferred.* And the order shall be made accordingly.

(9) Then the secretary shall read the seventh list provided for above; whereupon the President shall say: *You have heard the list of names as read by the secretary of the counsellors elect who have signed the pledge and paid the dues. Under the rules of the association these counsellors elect are entitled to be transferred to the roll of junior counsellors. If there is no objection they will be so transferred.* And the order shall be made accordingly.

(10) Then the President shall say: *Have all the counsellors been called? Is there anything else to be done in relation to the revision of the roll of the college of counsellors?* And if there is nothing, he shall add: *The revision of the second roll is here ended. The roll of the college of counsellors stands closed until the next annual session of the association.*

Adopted at Huntsville, 1891.

CONTRACT PRACTICE.

We have duly considered the report of the Committee on Contract Practice. It is a subject of great difficulty and of great importance. We have not time now to go into a thorough discussion of all the issues involved. We may however be allowed to say briefly:

That times have greatly changed in Alabama during the last twenty years. Before the days of railroads and great mining and manufacturing enterprises it was comparatively easy to enforce the traditional rule of the medical profession against contract and salary practice. It is not so now. Salaries more or less liberal are now offered by so many corporations and companies and have been accepted by so many doctors that longer persistence in the condemnation, in all cases and under all circumstances, of this sort of practice threatens the disruption of the profession of the state into two hostile camps. We can not think that this is desirable.

We can understand very well why the great railroad corporations desire to have their own surgeons in cases of injury resulting from railroad accidents. Then experience has shown that in many mining, manufacturing, and other industrial enterprises, the condition of things is such, that doctors are not able as a rule to collect compensation for their services unless some arrangement is made with the managers of such enterprises.

In a word, after a very mature consideration of the whole problem, we have reached the conclusion that some concession should be made so as to allow salary practice in such cases as those we have mentioned. At the same time we think the concessions proposed to be made in the scheme presented by the committee, are somewhat too sweeping. We have accordingly modified the Substitute for Section three of the Ethical Ordinances of the Association, page 222 of the Book of Rules; and in this modified form which here follows, we respectfully recommend its adoption by the association:

Be it Ordained by the Medical Association of the State of Alabama, That section 3 of the Ethical Ordinances of the Association, page 222 of the Book of Rules, be modified so as to read as follows: He may practice for a stated salary for any railroad corporation so far as railroad accidents and injuries are concerned; for any mining or manufacturing establishment, but not to include the salaried officials and managers of such establishments; for state, county, or municipal educational and charitable institutions; and on plantations cultivated by tenants or hired laborers; and that all underbidding and soliciting under this system of practice shall be regarded as unprofessional and unethical in the same way, and to the same extent as in ordinary private practice.

Adopted at Birmingham, 1890.

MEDICAL ETHICS.

All American doctors give in their adhesion as a matter of course to the code of ethics of the American Medical Association; and all of them recognize in a general way that the said code is full of lofty morality and worthy of the most unqualified admiration—as worthy, indeed, of more than admiration—worthy of unquestioning and thoroughgoing

obedience. In a word, it is the accepted law of the profession, and is binding on the professional conscience as the ten commandments.

There are two sorts of faith—faith explicit, and based on direct articulate knowledge; and faith implicit, which is based on indirect and incidental considerations.

In all cases and under all circumstances, we are willing to bow to the authority of the ethics. But very many of us very often would find ourselves at a loss off-hand to tell which of two opposite opinions on a given question is in harmony with the teachings of the ethics. In a word, a great many of us are not so familiar as we should be with either the letter or the spirit of the ethics.

It has occurred to us that any plan or device which would tend to bring the ethics home to the minds and consciences of the members of the profession could not fail to bear good and desirable fruit; and in consonance with this impression we venture to make two recommendations:

(1) That the president of the state association shall annually appoint a monitor, whose duty it shall be to read at every annual session of the association an essay on the ethics, or some part of the ethics of the American Medical Association, said essay to have place just before the regular reports.

(2) That this association recommends that the president of every county medical society shall appoint annually a monitor, whose duty it shall be, at least once within the year, to read an essay on the ethics of the American Medical Association; and whose further duty it shall be to watch over the ethical welfare of his society, and to call attention from time to time, to such special teachings of the ethics as may seem to require elucidation in view of special circumstances and occasions.

Adopted at Birmingham, 1890.

THE HISTORIAN.

Be it Ordained by the Medical Association of the State of Alabama, That the president of the association shall appoint annually a historian, whose duty it shall be to prepare, under

the direction of the president, suitable biographical sketches of such counsellors as may have died during his term of office; and that the report of the historian shall be read at each annual session of the association, next after the reports of the vice-presidents, or next after the monitor's address, as may be found most convenient, on the first day of each annual session.

Ordinance Regulating Banquets.

Be it Ordained by the Medical Association of the State of Alabama, (1) That at every annual session of the association every member, counsellor, or delegate, who desires to participate in a banquet, shall deposit with the committee of arrangements the sum of five dollars as his contribution to the banquet fund.

(2) That if by the end of the second day of the session there are as many as twenty paid subscriptions, then the committee of arrangements shall order a banquet with as many seats as there are paid subscriptions—the said banquet to be held on the evening of the third day of the session.

(3) That if by the end of the second day of the session the number of paid subscriptions is less than twenty, then the money must be returned to the subscribers, and there shall be no banquet.

The foregoing ordinance has been virtually abolished by the action of the association at Selma, 1893, as follows:

The interest of the association to a large majority of our members grows out of the medical papers and discussions; and for this very important part of our proceedings the time at our disposal is not as ample as we could wish. In order that we may have, for the purpose mentioned, as much time as possible we recommend that in the future at our annual sessions there shall be no music or recitations in connection with the annual oration on Tuesday evening; and that there

shall be no entertainment or reception on either Wednesday or Thursday evening, but that both of these evenings shall be devoted to our medical and scientific work. These recommendations were adopted by the association.

Some Important Suggestions for the Medical Examining Boards.

From time to time in our annual reports we have called attention to such of the rules for the government of the examining boards as have not been always sufficiently observed. The most important of these are as follows:

(1) No physician coming into a county should be allowed to practice at all—not even to take one single case—until he has complied with the law.

(2) The examination should always include the ten schedule branches, and no others; and questions concerning the medical treatment of diseases must be absolutely avoided.

(3) Care must always be taken to select a trustworthy and competent supervisor, and this without reference to the wishes of the applicant. The supervisor should be well paid and should be required to do his whole duty.

(4) Members of the board of examiners should carefully and promptly prepare questions in the branches assigned them; but if any examiner fails so to do the questions in his branches should be furnished by the other members of the board. An applicant must not be kept waiting because one member of the board neglects to do his duty.

(5) Trivial and rudimentary questions should be scrupulously avoided; and mere catch-questions, or questions of special difficulty and but little practical importance should not be tolerated.

(6) The rule with regard to an adequate knowledge of the English language should be vigorously enforced. There

are already too many doctors in Alabama who cannot write decent English, and we don't want any more of that sort.

(7) The examining boards must hold all applicants up to a respectable standard of professional qualifications. We cannot afford to fill up the profession with ignorant and incompetent men; and the mere fact that a man has managed to get a diploma from a third class medical college does not afford even a fair presumption that he is qualified to practice medicine.

(8) Surely there is not a single board of medical examiners in Alabama who are so wanting in intelligence, in medical knowledge, in professional pride, and in moral courage as to be unable to conduct an examination as it should be conducted, and to give such ratings to the answers of applicants as will be just and fair to everybody concerned.

NEW RULES FOR THE EXAMINING BOARDS.

(1) Some years ago the oral examination of applicants was repealed for the well understood reason that it was often difficult to get the members of the examining boards together to conduct the oral examination in a proper way. It sometimes occurs, however, that the examining board have some doubts left in their minds by the written examination which an oral examination might serve to clear up. To meet such contingencies we recommend that whenever any board of examiners may deem it expedient they may also require the applicant to pass an oral examination in the presence of not less than a quorum of the board.

(2) Sometimes it happens that an examiner prepares faulty, or inadequate, or badly expressed questions, and in this way one member may bring discredit on the entire board. To obviate occurrences of this kind we recommend that all the questions as prepared by the different members of a board in their respective branches should be submitted to the entire board for discussion, criticism, change, or approval.

(3) It may also occur that, with or without improper motive, some one of the examiners may overrate or underrate the answers of an applicant to his questions, and to the grave discredit of the board. We therefore recommend that whenever there is any doubt about the correctness of any of the ratings, and whenever it is practicable so to do, the entire board should revise all the valuations and either approve of them, or scale them up or down as in their judgment justice and fair dealing may dictate.

(4) After the annual sessions of 1893-4 the diplomas of medical colleges that require only two courses of lectures for graduation will not be recognized by the authorized boards of medical examiners in Alabama.

Adopted at Selma, 1893.

The Decision of the Supreme Court in the Brooks Case.

This decision is printed here because of the fact that it sustains at all points the constitutionality of the law to regulate practice in Alabama. The defect in section 4078 of the Code, which it points out, has since this decision been removed by special act of the General Assembly.

BROOKS V. THE STATE.

Indictment against Unlicensed Physician.

1. *Constitutionality of statutory provisions regulating practice of medicine.*—The statutory provisions regulating the practice of medicine in this state, giving to the county commissioners power to appoint a board of medical examiners, with authority to examine and grant licenses to applicants, if there is in the county no medical society in affiliation with the State Medical Association, but further providing that their authority shall cease so soon as such county medical society may be organized, and confiding to such society the exclusive right and authority to examine and license, according to "the standard of qualification, the method or system, and the subjects of examination prescribed by the State Medical Association" (Code, §§ 1296-1307), is a valid exercise of the police power, and is not violative of any constitutional provision or principle.

2. *Practicing medicine without license, under foreign diploma.*—Under the statute which makes it a misdemeanor, punishable by fine, for any person to practice medicine or surgery "without having first obtained a license or diploma, or certificate of qualification, or not being a regular graduate of a medical college of this state, having had his diploma legally recorded" (Code, § 4078), a conviction can not be had against a person who has procured a diploma from a regular medical college in Georgia, and has had it recorded in the county in which he is practicing his profession, and which there is a county society in affiliation with the State Medical Association.

From the Circuit Court of Russell.

Tried before the Hon. JESSE M. CARMICHAEL.

The defendant in this case, Dr. S. W. Brooks, having procured a diploma from a regular medical college in Georgia, came into Russell county, Alabama, in April, 1889, and there began to practice medicine, having had his diploma recorded in the office of the judge of probate. At that time, there was a county medical society in Russell, in affiliation with the State Medical Association; and Dr. Brooks not having gone before its board of censors for examination, license, or certificate of qualification, the indictment in this case was found against him, for practicing medicine in violation of section 4078 of the Code. The court charged the jury, if they believed the evidence, they must find the defendant guilty; to which charge the defendant excepted.

GEO. P. HARRISON, for appellant.

WM. L. MARTIN, Attorney-General, and TOMPKINS & TROY, *contra.*

STONE, C. J.—Cooley Const. Lim. (5th Ed.), 722; *Dent v. West Va.*, 129 U. S. 114; *McDonald v. State*, 81 Ala. 279; 60 Amer. Rep. 158; *N., C. & St. L. R. R. Co. v. State*, 83 Ala. 71; *L. & N. R. R. Co. v. Baldwin*, 85 Ala. 619. Tideman, Limitations of Police Power, § 87, doubts this doctrine, but we do not agree with him. We do not place the state's right and power in the premises on the ground of benefit or privilege conferred on the physician. It stands on the higher plane of protection to the public against the consequences of ignorance and quackery. Nor do we think there is anything in the objection, that by the terms of the law its provisions take effect in any given county, only when there is a medical society organized in such county, in affiliation

with the Medical Association of the state, as declared by the act approved February 9, 1877.--Sess. Acts, 80; Code of 1886, §§ 1301 *et seq.* We are not able to perceive any difference in principle between the statute under discussion, and the stock laws and local-option statutes, so frequently brought before us for determination.--*Dunn v. Court of County Comm'rs*, 85 Ala. 144.

We find nothing in the civil aspects of the statute which offends the State constitution.

The violation of the statute we have in hand is, however, not an offense which the law characterizes as *malum in se*. It is only *malum prohibitum*, or a wrong only because the law prohibits it. Such violation of law is not, without more, an indictable offense. Says Mr. Cooley--Const. Lim. (5th Ed.), 745--"Whether the prohibited act or omission shall be made a criminal offense, punishable under the general laws, or subject to punishment under municipal by-laws, or on the other hand, the party be deprived of all remedy for the right, which, but for the regulation, he might have had against other persons, are questions which the legislature must decide." So, however much the legislature may enjoin certain duties, or interdict certain omissions of duty, unless the duty commanded, or the act prohibited, would amount to an indictable offense independent of the statute, no indictment can be maintained, unless the statute expressly authorizes it.

Section 4078 of the Code of 1886 is the statute under which it is claimed the defendant was rightly convicted. It stands in the place of section 4243 of the Code of 1876, but is materially different from it. It declares, that any person practicing medicine or surgery, except in one of four named categories, "must on conviction be fined not more than one hundred dollars." There is no other statutory provision bearing expressly on this aspect of the case. The enumerated categories, which the statute excluded from its operation, are: first, that the physician or surgeon has first obtained a *license;* or, second, that he has obtained a *diploma;* or, third, that he has obtained *a certificate of qualification;* or, fourth, that he is a *regular graduate of a medical college of this State, having had his diploma legally recorded.*

It was proved that, before defendant entered upon the practice of medicine in Russell county, there was organized in said county a county medical society, in affiliation with the Medical Association of Alabama, as provided by section 1301 of the Code of 1886, and that said county medical society had kept up its organization. The state proved a *prima facie* case against the defendant, and rested. The defendant then read in evidence a diploma from a regular medical college in the state of Georgia, and proved that he had had said diploma recorded in the office of the judge of probate of Russell county, before he entered upon the practice of medicine. The defendant was convicted--the court instructing the jury to find him guilty, if they believed the evidence.

By an examination of the Code of 1886, beginning with section 1296, it will be seen that under our statutes, there are two organizations, or systems, under which physicians may obtain authority to practice their profession. The one system is by license from a medical board established by the court of county commissioners, for the county in which the applicant proposes to practice,—§§ 1296, 1297. Under that system, "A regular graduate of a medical college in the United States, having a diploma," and having that diploma properly recorded, "is entitled (without license) to practice medicine, in a county having only a medical board established by the court of county commissioners." § 1298. Authority to practice medicine under the foregoing provisions is, however, limited to counties "in which there is no board of medical examiners organized in accordance with the constitution of the Medical Association of the State of Alabama, and in affiliation with the association; . . . But the existence and authority thereof must terminate whenever a board of medical examiners is organized in the county in accordance with the constitution of the Medical Association of the State, and in affiliation with the association." When such board of examiners is organized in any county, then a license or certificate of qualification from such board is a pre-requisite to the right to practice medicine in that county, with certain exceptions not raised by this record. Having a diploma from a medical college in this state, legally recorded, is not named as an exception. Hence, consulting only the language of the statute, it would seem that even a graduate of a medical college in this state, is not allowed to practice his profession in a county having a medical society in affiliation with the State Medical Association, without first obtaining a certificate of qualification, to be recorded as the statute prescribes.—Code, §§ 1302, 1306. This is the second system for obtaining authority to practice medicine, and supplants the other whenever it is in exercise.

The language of the penal enactment, § 4078, as we have shown, excludes from its operations four specified categories: The second of the categories expressly stated is, "not having first obtained a diploma." Brooks had first obtained a diploma, and, therefore, if we consult only the penal section, unaided by other provisions, his case does not fall within it. We are not permitted to say that the word *diploma* first mentioned in this section, and copied above, must mean a diploma from a medical college of the State of Alabama, for the fourth exception makes express provision for just such case. If exception two and exception four cover the same ground, why duplicate the expressions, and why require a record to be made in one case, and not in the other? If it be objected that the interpretation we propose leads to the absurdity of requiring an Alabama graduate to record his diploma, and excuses graduates of other medical colleges from doing so, our answer must be, that we are dealing not with our own language, but with the language of the statute as it is written.

It is contended in favor of the ruling of the Circuit Court, that we must interpret the penal section in the light of the statute found in the civil part of the Code—§ 1296 *et seq.*—and hold that, under its very general provisions, an indictment will lie for practicing medicine without conforming to what that somewhat comprehensive statute has enjoined as pre-requisite duties. And, carrying out this idea, it is claimed that we must so construe the statute as to make its provisions applicable to every departure from statutory requirements, whether the breach be committed in a failure to obtain authority from one board of examiners, or the other; that practicing medicine "without a license," or "without a diploma," must refer to counties which are without a board of medical examiners, in affiliation with the Medical association of the State, while the other two exceptional provisions refer to counties in which there is such board.

It would, as a general proposition, be dangerous to apply such liberal rules to the interpretation of penal enactments. When the legislature enjoins several duties, some of graver, and others of minor importance, and then declares that a breach of the graver of those duties shall constitute an indictable misdemeanor, and fails to make a similar declaration as to the others, to assume that they meant more than they expressed would be treading on dangerous ground. To undertake the practice of medicine without a diploma, without a license, and without a certificate of qualification, is certainly a graver offense to society and its well-being, than to assume to practice by virtue of a medical education and diploma from a college outside of the State of Alabama, or to omit to have that diploma recorded. We cannot know that the legislature intended further than they have expressed their intention.

There is a stronger reason why we can not adopt the interpretation contended for. Under the provisions of the civil part of the statute, only certain expressed classes of persons can, without examination, obtain certificates of qualifications, from examiners acting in affiliation with the State Medical Association; and such certificate—not the diploma—must be recorded.—Code, §§ 1305-6. There is no provision authorizing graduates of an Alabama Medical College to practice medicine without a certificate of qualification, or which entitles them to such certificate on the mere production of a diploma. Yet it is clearly not an indictable offense for "a regular graduate of a medical college of this state, having had his diploma legally recorded," to engage in such practice. This demonstrates that the penal section, 4078, is not co-extensive with what are called the civil provisions.

The judgment of the Circuit Court is reversed, and inasmuch as the defendant can not, under the facts of this case, be convicted, the cause will not be remanded. Let the defendant be discharged.

It will be seen that in this decision all the points raised against the constitutionality of the medical law as it stands in the civil code were overruled; and to this extent the decision is a great gain to us. In one word, the constitutionality of the law is fully established. The only trouble there is attaches to the penal section in the criminal part of the code, which, according to this decision, provides no penalty for violation of the law. Dr. Brooks is an illegal practitioner, but he cannot be criminally punished; but as we have seen this defect has been removed by subsequent action of the General Assembly.